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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MURAT KURASHEV,

Defendants.

CASE NO. 2:21-CR-00040 KJM

GOVERNMENT'S RESPONSE TO
DEFENDANT'S FORMAL PSR OBJECTIONS
AND SENTENCING MEMORANDUM

DATE: April 29, 2024
TIME: 9:00 a.m.
COURT: Hon. Kimberly J. Mueller

**GOVERNMENT'S RESPONSE TO DEFENDANT'S FORMAL PSR OBJECTIONS AND
SENTENCING MEMORANDUM**

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I. INTRODUCTION

The United States, by and through the undersigned, submits the memorandum in response to the defendant Murat Kurashev’s (“Kurashev”) formal PSR objections and in support of its 240 month sentence, followed by an appropriate term of supervised release.

II. FACTUAL AND PROCEDURALS HISTORY

A. Procedural History

Kurashev was charged in a single-count indictment with Attempting to Provide Material Support to a Foreign Terrorist Organization in violation of 18 U.S.C. § 2339B(a)(1). ECF 1. On January 9, 2024 Kurashev pleaded guilty as charged to the indictment without a plea agreement.

1 **B. Factual History**

2 1. Overview¹

3 Kurashev is a Russian citizen who has no lawful status in the United States and at the time of his
4 arrest in February 2021 was the subject of immigration removal proceedings. Kurashev and his family
5 entered the United States through Mexico. Between in or about July 2020 and February 2021, while in
6 the Northern and Eastern Districts of California, Kurashev used money transfer services to send
7 approximately \$13,000 to two known couriers of Farrukh Fayzimatov, who is a fundraiser for Hay'at
8 Tahrir al-Sham (HTS), a designated foreign terrorist organization located in Syria.

9 From review of social media and encrypted mobile messaging discussions between Kurashev
10 and Fayzimatov, it is clear they equate providing money in support of the foreign terrorist organization's
11 fighters as tantamount to being engaged in violent jihad. During these conversations with Fayzimatov,
12 **Kurashev mentioned that he wished he could join the fight in Syria as a mujahideen and regretted**
13 **that he could only provide financial support.**² The conversations between Fayzimatov and Kurashev
14 make clear that Kurashev was fully aware of Fayzimatov's support of HTS and his violent extremist
15 ideology. Additional evidence seized by the FBI revealed that Kurashev followed Fayzimatov's on-line
16 presence and various social media accounts. Some of Fayzimatov's social media accounts that were
17 viewed by Kurashev included solicitations for money to purchase military equipment, boots, clothing,
18 firearms, and, in one case, a motorcycle, which according to Fayzimatov, would help the fighters avoid
19 bombs and strengthen the frontlines. In a follow-up video by Fayzimatov announcing the purchase of
20 the motorcycle and an assault rifle, Fayzimatov was recorded writing Kurashev's alias "Abu Salim" on
21 the motorcycle and reminding his audience that donating for the purchase of the motorcycle was
22 tantamount to participating in the frontlines of the war in Syria. Kurashev's name and information were
23 even provided to an undercover law enforcement operative by Fayzimatov as a means to facilitate funds
24

25 ¹ The United States incorporates by reference the federal search warrant found at
26 KURASHEV SENSITIVE_00041957-00042048, which was previously provided to Kurashev during
27 discovery and to the Court during the pre-trial detention litigation. It can also be found at 2:21-SW-
0211 JDP.

28 ² Emphasis added. Certain quotations herein are taken from draft transcripts of communications
or content that have been translated by certified linguists and are related in substance and part only.

1 reaching Fayzimatov. *See* Affidavit 28. Fayzimatov described Kurashev as a “good and trustworthy
2 brother.” *See* Affidavit 30.

3 The FBI also located evidence on Kurashev’s phone that shows that on or about February 10,
4 2021, Kurashev transferred \$200 worth of Bitcoin directly to a wallet for Fayzimatov. Fayzimatov sent
5 the wallet address directly to Kurashev via an encrypted mobile messaging application on the same day.
6 Kurashev responded, “sent.” While the Government has not charged him with obstruction, Kurashev
7 deleted these messages from his cellular device. The FBI recovered the messages that Kurashev deleted.

8 Although he was working in construction and not detained in-custody by Immigration and
9 Customs Enforcement (ICE) prior to his arrest on this indictment, Kurashev’s conditions of release
10 required that he wear an ankle location monitor. Other than his wife and four children, Kurashev has no
11 apparent, deeply held connections to the United States or the Eastern District of California, and his other
12 immediate and extended family members reside overseas.

13 2. Kurashev’s consumption of violent extremist content and interest in weapons

14 The FBI’s review of Kurashev’s electronic devices seized at the time of his arrest and his online
15 accounts revealed that Kurashev has demonstrated a sustained commitment to the consumption of
16 violent extremist content; he was even in direct contact with at least one of the individuals featured in
17 the terrorist videos that he consumes: Fayzimatov. Among the numerous videos found on Kurashev’s
18 devices and in his online accounts is content that the FBI assesses is of HTS, with which Fayzimatov is
19 affiliated. One such HTS video contains imagery of fighters, weapons, first-person shooting footage and
20 other violent extremist content. Another video found by the FBI depicts an individual, presumably
21 Kurashev, driving down Interstate 80 watching approximately 51 seconds of the above-described video
22 in his vehicle. Kurashev’s devices also contained evidence of his frequent access to a website that,
23 among other content, displays videos of HTS members and paramilitary operations, such as videos
24 depicting shooting, fighters, and trenches dug in the vicinity of Idlib, Syria. The website also featured
25 videos titled in Russian such as: (1) Faruk Shami³ – Interview with official representative of HTS Abu

26 ³ “Faruq Shami” is an alias used by Farrukh Fayzimatov. At the time of the indictment,
27 Fayzimatov was a known fundraiser for HTS. At all times relevant to the offense conduct, HTS was a
28 designated foreign terrorist organization as defined in 18 U.S.C. § 2339B(g)(6). Farrukh Fayzimatov
later became individually designated as a Specially Designated Global Terrorist for his fundraising and
recruitment activities on behalf of HTS in July 2021. Fayzimatov’s designation pursuant to E.O. 13224,

1 Khalid Shami; (2) Faruk Shami – Every person has the duty to fight with their soul (23.10.2019); (3)
 2 Interview with Amir HTS – Abu Muhammad Julani⁴ (voiced in Russian); (4) Faruk Shami with the HTS
 3 Storm Troopers Squad; and (5) Overview of a Mujahid’s Armor, wherein Fayzimatov explained the cost
 4 of the tactical attire and rifle held by a fighter in the video and stated anyone who would like to
 5 participate in arming the mujahid could pay for a full set of armor or contribute towards the purchase of
 6 armor. Notably, the cost is far lower than what Kurashev sent to Fayzimatov.

7 In addition to his active consumption of violent extremist media content, the FBI found evidence
 8 that suggests Kurashev may have been contemplating additional mechanisms for material support—
 9 beyond money— whereby he could engage in jihad. The FBI discovered that on or about February 1,
 10 2021, Kurashev conducted a Google search for “devtac ronin,” which is believed to be a reference to the
 11 DevTac Ronin ballistic helmet. Kurashev then visited the following websites: bulletproofzone.com,
 12 securityprousa.com, amazon.com, devtacdesigns.com, and batmanfactor.com. On one of Kurashev’s
 13 social media accounts, the FBI also found a message from Safe Life Defense providing information
 14 about a body armor bundle that included the following: 2 NIJ certified level IIIA + panels, 2 (ICW)
 15 Level IV rifle plates, 1 tactical carrier for overt wear, and 1 concealed carrier for covert wear. Further
 16 examination of Kurashev’s electronic devices revealed additional evidence in these categories,
 17 specifically with respect to: (1) messages about a rifle scope with night-vision capability from Outdoor
 18 Optics, which is company that sells tactical and hunting equipment; (2) what appears to be the purchase
 19 using Kurashev’s credit card and subsequent use of a Virtual Private Network (VPN) to view the
 20 Outdoor Optics website; (3) a German language Google search for the term “one piece of advice for
 21 every terrorist” along with a Google search in English for the term “armour helmet send to another
 22 country,” and the English to Russian translation for “rifle” and “jamming;” (4) a Facebook message
 23 advertising infrared night sights with HD recording; (5) a visit using a different VPN to securelyfe.com,
 24 a website that appears to sell night vision scopes. The FBI does not know at this time if Kurashev was

25 _____
 26 as amended, was for having materially assisted, sponsored, or provided financial, material, or
 27 technological support for, or goods, or services to or in support of HTS. Kurashev directly
 28 communicated with Fayzimatov via social media and encrypted messaging platforms and used
 intermediaries provided by Fayzimatov to send funds to HTS.

⁴ Muhammad al-Julani is currently the leader of HTS.

1 planning to purchase these items for use in the United States or to send this equipment and/or body
2 armor overseas for use by the foreign terrorist organization.

3 YouTube videos viewed by Kurashev's account included content concerning: (1) numerous
4 references to terrorists and terrorist attacks, (2) ideological extremism, (3) Faruq Shami, (4) VPN
5 functionality, (5) how law enforcement agencies track smart phones, (6) fictitious marriage to obtain
6 citizenship, and (7) numerous videos pertaining to marrying a second wife. Kurashev's account also
7 viewed numerous videos about weapons including: (1) handguns, (2) drones, (3) tanks, (4) combat
8 helicopters, (5) bulletproof helmet, (6) mortars, (7) artillery, (8) shahids⁵ at the judgement day, and (9)
9 what happens if you mix red lead and aluminum powder. Kurashev's account searched YouTube for:
10 (1) kamikaze drones, (2) katana sword, (3) how to exchange Bitcoin for real money, (4) red lead bomb,
11 and (5) is it allowed to send armor to another country.

12 3. Kurashev's interest in traveling to Syria and Turkey

13 In or around September 2020, Fayzimatov provided advice to Kurashev about life in Syria. It
14 appears that Kurashev inquired of Fayzimatov about purchasing a residence in Syria. Fayzimatov wrote,
15 "Allah helps everyone who comes to fight in his name." *See* Affidavit at 23. Additionally, in or around
16 October 2020, **Kurashev wrote to Fayzimatov that he felt sad very often because he [Kurashev] did**
17 **not join the mujahids,⁶ and that his heart longed for the ribats [fortifications].⁷** *See* Affidavit at 38.
18 In or around November 2020 (*See* Affidavit at 41), Kurashev wrote, "Inshallah in time I will join you
19 [...] I dream about joining you [...] jihad is difficult, but the reward is great." *See* Affidavit at 42.

20 In 2020 and early 2021, Kurashev's account repeatedly searched YouTube for terms in Russian
21 or English such as: (1) Idlib Syria, (2) Syrian Arabic, (3) how to become a farmer in Turkey, (4) best
22 places to live in Turkey, (5) business in Turkey, (6) Germany or Turkey. Kurashev's account viewed
23

24 ⁵ "Shahid" is an Arabic word for martyr and is frequently used by violent extremists to describe
25 their desire to die in the service of their cause.

26 ⁶ Mujahid is an Arabic term which refers to one who engages in jihad. Jihad is an Arabic word
27 meaning "struggle." In a violent extremist context, jihad has militaristic connotations and can refer to
28 warfare, fighting, or other acts of violence against people or groups deemed to be enemies of
fundamentalist interpretations of Islam promulgated by various designated foreign terrorist groups, to
include HTS.

⁷ Emphasis added.

1 YouTube videos about: (1) Syria, (2) learning Syrian dialect Arabic, (3) the conflict in Syria, (4) the
2 border with Syria, (5) real estate in Turkey, (6) Russian military operations in Turkey, (7) Turkish
3 weapons and their cost in 2019, and (8) numerous other videos about living and working in Turkey.

4 4. Internet use obfuscation

5 Many members and supporters of extremist organizations routinely promote the use of mobile
6 messaging applications with end-to-end encryption, VPN use, and other operational security measures to
7 thwart law enforcement detection. Fayzimatov also regularly advised his viewers and social media
8 followers to employ operational security measures; in January 2021, Fayzimatov announced a decision
9 to hold a contest where whenever they purchased a weapon or motorcycle, they would write the name of
10 one of the donors on it. Contest winners would be chosen in part based on the level of operational
11 security employed when transferring the money, such as using cryptocurrency. Kurashev was selected
12 as one of the winners, and in early February 2021, Fayzimatov posted a video writing Kurashev's
13 teknonym on a motorcycle. Evidence obtained from a review of Kurashev's accounts and devices
14 revealed Kurashev's account searched YouTube for: (1) how does a VPN work on android, (2) to use
15 Telegram safely, (3) phone without SIM and Telegram, and (4) how to send money through Western
16 Union online. Furthermore, as previously noted, Kurashev demonstrated sophistication in obfuscating
17 his activity through the use of a VPN and encrypted messaging applications. Fayzimatov advised
18 Kurashev, among other things, to conceal his identity when using or communicating over the internet,
19 and Kurashev used an unattributed phone number with a UK country code. *See* Affidavit at 44.

20 5. Kurashev's radicalization

21 Kurashev's communications further indicate that Kurashev became steadily more radical in his
22 support for violent extremism during the approximately six months leading up to his arrest. In fact, one
23 day prior to his arrest, Kurashev communicated directly with Fayzimatov on an encrypted mobile
24 messaging application. Fayzimatov reached out to tell Kurashev he would be livestreaming shortly, and
25 about two hours later, Kurashev remarked enthusiastically about Fayzimatov's livestream once it
26 concluded. At one point in their messaging exchange, Fayzimatov wrote, "If you decide to do it [invest
27 in one of Fayzimatov's projects], **trust in Allah, knowing that you are using your assets to carry out**
28

1 **jihad.”**⁸ Kurashev responded, “Yes, brother, I am trying to act with only this intent.” Later,
 2 Fayzimatov asked, “Do you know how much we spent on one operation here? At least \$200,000.”
 3 Kurashev replied, “I know that it’s costing a lot of money [...] War is an expensive pleasure. [...] **I**
 4 **hope we become shahids and recollect these days with a smile on our faces.”**⁹ Kurashev deleted
 5 these messages from his cellular device.

6 Given Kurashev’s increasing radicalization over time, the FBI assesses that had he not been
 7 arrested, he may have become an operational participant in terrorist activities. Although there is no
 8 method to fully quantify the extent of Kurashev’s radicalization, the FBI can assess his observed
 9 behaviors within the context of mobilization indicators. *See* US Violent Extremism Mobilization
 10 Indicators (2021 Edition).¹⁰ These indicators were developed from FBI terrorism investigations, peer-
 11 reviewed academic studies, and analytic exchanges between the intelligence community and law
 12 enforcement professionals. In summary, the FBI assesses that Kurashev meets the following
 13 mobilization indicators to violence, including, among others:

- 14 - (1) Planning or preparing to travel abroad to join a violent extremist organization,
- 15 - (2) Unusual [research of] military style tactical equipment (i.e. body armor),
- 16 - (3) Increased use of online concealment tactics,
- 17 - (4) Directly communicating or developing a relationship with violent extremists or being
- 18 contacted by them,
- 19 - (5) Sending financial resources to violent extremists,
- 20 - (6) Expressing a desire to die for a violent extremist ideology, and
- 21 - (7) Excessively consuming online violent extremist content, including videos, narratives, and
- 22 other media.

22 Kurashev’s behavior firmly places him on the continuum for mobilizing to violence.

23 Upon his release from federal prison, should the Kurashev not “de-radicalize” and reject violent
 24 extremist ideology, the United States believes Kurashev meets two additional mobilization indicators to

25 ⁸ Emphasis added.

26 ⁹ Emphasis added.

27 ¹⁰ Available at
 28 [https://www.dni.gov/files/NCTC/documents/news_documents/Mobilization_Indicators_Booklet_2021.p](https://www.dni.gov/files/NCTC/documents/news_documents/Mobilization_Indicators_Booklet_2021.pdf)
[df](https://www.dni.gov/files/NCTC/documents/news_documents/Mobilization_Indicators_Booklet_2021.pdf) (accessed on May 18, 2023).

1 violence: (1) having to cope with existing, new, or changing personal circumstances, including personal
 2 relationships, family dynamics, employment and (2) presence of real or perceived injustice of a feeling
 3 of being wronged (grievances), which may be broad or specific to a person, group, or event. The
 4 prospect of a 20-year term of incarceration threatens to effectively eliminate Kurashev's ability to travel,
 5 communicate with and provide additional money to a foreign terrorist group, or to be with his family for
 6 the foreseeable future. Because of his crime and the likelihood of deportation following his prison
 7 sentence, Kurashev will likely not witness his children grow up. These stressors, when coupled with his
 8 violent ideology, make him extremely dangerous and a volatile threat to the community following his
 9 release from custody. FBI Director Christopher Wray's observation, "Homegrown violent extremists
 10 provide few dots to connect and can move from radicalization to mobilization rapidly, using easily
 11 accessible weapons and soft targets," is also highly relevant here, particularly given Kurashev's direct
 12 communication with Fayzimatov.¹¹

13 **III. KURASHEV'S FORMAL PSR OBJECTIONS**

14 **A. The Probation Officer correctly applied the Advisory Guideline provisions**

15 Both the PSR and Kurashev correctly identify the Guideline provisions at issue. They correctly
 16 identify § 2X1.1 as the proper guideline because Kurashev was charged with an attempt to provide
 17 material support. They also correctly note that § 2X1.1 uses the base offense level of § 2M5.3, which is
 18 26, plus any specific offense characteristics from the guideline that are determined to have been
 19 specifically intended or actually occurred.

20 Where Kurashev is wrong, and the PSR correct, is in the application of the enhancement in §
 21 2M5.3(b)(1)(D) and (E). Through the multiple hearings in this case, the Government has established
 22 with reasonable certainty that Kurashev intended to provide funds to purchase dangerous weapons and
 23 firearms, and his funds likely did purchase dangerous weapons and firearms. These weapons were not
 24 for show; they were intended to be used in the commission of violent acts against the Syrian army and
 25 other opponents of HTS.

26
 27 ¹¹ "Worldwide Threats to the Homeland: Statement for the Record" | 17 September 2020 |
 28 www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-091720 | stated in a U.S. House of
 Representatives Homeland Security Committee hearing in September 2020

1 As described above, Kurashev's interest in supporting Fayzimatov went far beyond his media
2 work. Kurashev longed to be part of the fight but in lieu of being in Syria, provided money to outfit he
3 fighters who were there. He responded to Fayzimatov's direct solicitations of funds for weapons. One
4 donation stands out: Fayzimatov purchased a motorcycle and an assault rifle using donated funds, then
5 wrote Kurashev's kunya, an alias used in the fight, on the motorcycle to thank him for the donation. It
6 was Kurashev's funds that purchased the motorcycle.

7 Kurashev admitted to supporting Fayzimatov's media work, and some of his donations, such as
8 the "Umma Life" project he supported right before being arrested, were clearly for that work. But
9 Fayzimatov's primary goal was to raise money for HTS; the media work he was doing was to increase
10 his reach to find yet more HTS donors. The website where he solicited funds prominently featured HTS
11 militants and fighting scenes. On it, he posted a video handing cash directly to Abu Dirar, who he
12 explained is an HTS member collecting money for the military wing of the organization.

13 Kurashev knew that his donations would go to the military wing of HTS, and he intended them
14 to do so. Fayzimatov's fundraising account was called "Snaryadi," meaning "shells," which are tools of
15 the military not of journalists. On January 16, 2021, he sent Kurashev a video promoting a new
16 fundraising campaign in which he talked about past fundraising successes, bragging that the funds paid
17 for over 10 motorcycles for the mujahids, helped over a hundred orphans and widows, and equipped
18 over a hundred mujahids. Kurashev did not react to this video by expressing disappointment, surprise or
19 anger that none of his money went to buy the cameras or filming equipment he discusses in his letter to
20 the Court. Instead, he passed the video on to someone he thought was a fellow supporter (the NYPD
21 cyber operative) with instructions to access Muhajeer directly and contact Fayzimatov on his new
22 Telegram account. Likewise, when Fayzimatov contacted Kurashev asking where he wanted \$200
23 worth of Bitcoin Kurashev provided to go (for reasons of properly recording the transaction for bosses
24 an "independent" journalist would not have), Kurashev did not tell Fayzimatov to use it for cameras or
25 film equipment. He responded: "I don't know where you want it to go. You asked me for it, so I sent it
26 to you." This was in February 2021, a month after Fayzimatov mentioned using money to equip over a
27 hundred mujahids and long after his video handing cash to an HTS military leader. Yet Kurashev put no
28 limits on Fayzimatov's use of the money.

1 Kurashev donated \$13,000 through intermediaries to man whose shopping list prominently
2 features weapons for \$430 each. He put no limits or restrictions on how that money is to be used. He
3 now pretends to be blind as to how Fayzimatov was using that money, but Fayzimatov never hid his true
4 intentions. Kurashev intended some of his money to support the fight and, considering all the evidence
5 presented in this case, the chance that none of his \$13,000 bought weapons is infinitesimally small.
6 Kurashev knew that, and he continued to send money regardless.

7 The Government has shown with reasonable certainty that Kurashev provided funds “with the
8 intent, knowledge or reason to believe” that they would be used to purchase dangerous weapons,
9 firearms, and explosives. There is no speculation over what Fayzimatov would do with the money if it
10 reached him – he makes his intentions quite clear and Kurashev specifically intended for him to achieve
11 his goals. The money was intended to go to fund dangerous weapons, firearms and explosives, as
12 required by § 2M5.3(b)(1)(D), and to be used in the commission of violent acts, as required by §
13 2M5.3(b)(1)(E). The PSR is therefore correct in applying a two-level enhancement in Paragraph 37, and
14 Kurashev’s objection to that paragraph should be overruled.

15 **B. U.S.S.G. § 3A1.4 applies to Kurashev**

16 The terrorism enhancement in U.S.S.G. § 3A1.4 fits Kurashev like a glove. The enhancement
17 applies where the offense of conviction “is a felony that involved, or was intended to promote, a federal
18 crime of terrorism.” The term “federal crime of terrorism” is defined in 18 U.S.C. § 2332b(g)(5). The
19 definition is in two parts: first, the offense must be “calculated to influence or affect the conduct of
20 government by intimidation or coercion, or to retaliate against government conduct.” Second, it must be
21 a violation of an enumerated statute. The statute of conviction here, 18 U.S.C. § 2339B, is an
22 enumerated statute. Accordingly, the only question is whether the offense here was “calculated to
23 influence or affect the conduct of government by intimidation or coercion, or to retaliate against
24 government conduct.”

25 By Kurashev’s own admission, it was. When meeting with probation, Kurashev described his
26 motivation for the offense as follows:

27
28 I saw all the abuses Russia did to me and my community, how the Russian government

1 treats vulnerable people. When Russia started helping the Syrian government commit
 2 human rights abuses against the Syrian people, I felt I needed to do something to try to
 3 help, and thought that if more people knew how horribly Syrian civilians were treated,
 the international community would stop them. PSR at ¶ 34.

4 His actions were in direct response to the actions of the Russian and the Syrian governments and
 5 were meant to change the behavior of the Syrian government.¹² And HTS was the perfect way to
 6 achieve that goal. As Kurashev acknowledges, unlike globally focused terrorist organizations, “HTS is
 7 geographically focused on and in Syria and the surrounding region.” ECF 153 at 8. While HTS speaks
 8 out against Israel and the West, its primary focus is on fighting the Syrian government. As discussed
 9 above, Kurashev contributed to HTS’s military goals in response to campaigns calling for donations to
 10 purchase weapons, armor, and other military supplies. These supplies would equip HTS fighters with
 11 weapons, armor, and suicide bombs to fight these governments.
 12

13 This case is distinguishable from *United States v. Alhaggagi*, 978 F.3d 693 (9th Cir. 2020). In
 14 *Alhaggagi*, the defendant created social media and email accounts for Government sources and
 15 undercover agents pretending to be ISIS members. 978 F.3d at 696. Alhaggagi was evaluated as an “immature
 16 young man” who “demonstrate[d] a lack of ideological commitment to jihad.” *Id.* at 697. The Ninth
 17 Circuit rejected the enhancement because “one can open a social media account for a terrorist
 18 organization without knowing how that account will be used.” *Id.* at 702. While Alhaggagi participated
 19 in an ISIS chatroom, the Ninth Circuit found that there was no evidence that he saw the violent anti-
 20 American posts in that chatroom, acted based on those posts, or interacted with their authors. *Id.* at 703.
 21

22 Kurashev and Alhaggagi are polar opposites. Alhaggagi was an immature young man with no
 23 ideological commitment to jihad. Kurashev is a world-experienced man in his 30s who voiced his
 24 support for violent battle, yearned to be a part of it, and had religious conversations about the merits of
 25

26 ¹² There is no doubt that the Russian and Syrian Governments were committing horrific acts in
 27 Syria. But the righteousness of Kurashev’s desires to change those governments’ behaviors and retaliate
 28 for their actions is not relevant. It is his methods—providing money to a foreign terrorist organization to
 fight those governments—that are key.

1 providing money in lieu of fighting. Alhaggagi was not proven to have read or reacted to the ISIS posts
2 in the chatroom he was in. Kurashev was proven to have voraciously consumed Fayzimatov's violent
3 propaganda, happily replaying it while driving, interacting excessively with its author and following his
4 detailed instructions about operational safety and to who to send the funds. Kurashev meets all the
5 criteria the Ninth Circuit found lacking in *Alhaggagi*.
6

7 In discussing this enhancement in *Alhaggagi*, the Ninth Circuit agreed with the Second Circuit's
8 explanation of the term "calculated" in *United States v. Awan*, 607 F.3d 306, 317 (2nd Cir. 2010). *Awan*
9 is instructive in this case too. Awan provided funds to a terrorist organization called the Khalistan
10 Commando Force (KCF), which aimed to compel the Indian government to allow the creation of a Sikh
11 state and engaged in violent means to meet its aims. *Id.* at 310. He was convicted of violating 18 U.S.C.
12 § 2339A. The district court refused to apply the terrorism enhancement because there was evidence that
13 defendant provided the funds because the fundraisers he was giving the money to were influential and
14 important and he wanted to be associated with them.
15

16 The Second Circuit explained that the district court focused on the wrong thing—motive rather
17 than "calculation." "Calculation may often serve motive, but they are not, in fact, identical." *Id.* at 317.
18 "The section is better understood as imposing a requirement that the underlying felony be calculated to
19 influence or affect the conduct of government by intimidation or coercion, or to retaliate against
20 government conduct." *Id.* (cleaned up). As the Second Circuit explained, whatever the defendant's
21 personal motive, it is the desired result of the crime that determines whether the enhancement applies.
22 For example, the murderer of a head of state will certainly know that their conduct will influence
23 government. That they may commit the murder for other personal reasons is irrelevant.
24

25 Kurashev knew what HTS was and what their goals were. Fayzimatov did not hide the ball. He
26 proudly showed off weapons and bombs and even interviewed suicide bombers about to set off on their
27 missions. Like defendant Awan, Kurashev knew HTS would use his money for its violent anti-
28

1 governmental struggle. As in *Awan*, the terrorism enhancement applies here.

2 Notably, another district court recently applied a terrorism enhancement in a case that involved
 3 attempting to provide funds to HTS. The defendant in *United States v. Giampietro*, 614 F. Supp. 3d
 4 612, 614 (M.D. Tenn. 2022), pleaded guilty to concealing the provision of material support in violation
 5 of 18 U.S.C. §2339C. She opposed the application of the terrorism enhancement, claiming she was
 6 concealing the money to avoid law enforcement. The district court noted that HTS aimed to overthrow
 7 the Assad regime and establish an Islamic Emirate in Syria, and that it was known as one of the
 8 strongest insurgent groups in Syria. *Id.* at 618 (quoting
 9 <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/hayat-tahrir-al-sham>). The district court
 10 concluded that whatever Giampietro’s personal motivation was, there was no doubt that Giampietro’s
 11 actions were calculated to getting two FBI undercover to Syria so they could provide HTS with funds
 12 as well as services. “All of this was calculated to influence or affect the conduct of the Syrian
 13 government (and perhaps the United States Government) through Defendant's material support of HTS.”
 14 *Id.* at 622. The court therefore applied the enhancement.

15 Like Giampietro, Kurashev intended to support HTS, an organization that openly aims to replace
 16 the Syrian government with an Islamic Emirate through violence. Unlike Giampietro, who at one point
 17 told an undercover that “HTS is no good,” *Id.* at 618, Kurashev never questioned or doubted their goals.
 18 If the enhancement applied to the defendant in *Giampietro*, it certainly applies to Kurashev.

19 The Court should overrule this objection.

20 **C. U.S.S.G. § 3A1.4 does not violate due process**

21 Kurashev claims without citation that § 3A1.4 violates due process. Kurashev faults the
 22 terrorism enhancement for being the result of a Congressional directive instead of the result of empirical
 23 data. ECF 153 at 6. He encourages this Court to conclude that the resulting range is therefore greater
 24 than necessary. This strange position elevates the Sentencing Commission over Congress, the body that
 25 created it and sets its rules. Congress recognized that terrorism cases are different and merit unique
 26 treatment. As long as Congress’s actions are constitutional, Courts should aim to fulfill Congressional
 27 intent.

28 Kurashev’s other complaints about the enhancement are contradicted by his own briefing. He

1 argues that the enhancement obliterates the distinction between attempted and completed offense, but
2 the parties are arguing about two points that rest on that difference. He also claims that it is irrational to
3 enhance a crime of terrorism for terrorism. But as the debate over the application of the enhancement
4 here proves, the terrorism enhancement does not automatically apply to every terrorism offense.

5 Because there is no due process violation, the Court should overrule Kurashev's objection.

6 **D. Paragraph 7**

7 The United States does not object to the removal of Paragraph 7 from the PSR.

8 **E. The PSR correctly concludes that there are no factors warranting a departure**

9 Kurashev asserts that his lack of criminal history and the application of § 3A1.4 may warrant a
10 downward departure because his criminal history category is overstated and should have been noted by
11 the Probation Officer in paragraph 99. In support of his assertion, Kurashev claims that § 3A1.4 is not
12 based on recidivism studies or relevant data. He cites several district court cases and the Second Circuit
13 opinion in *United States v. Meskini*, 319 F.3d 88, 92 (2nd Cir. 2003) for the proposition that Court has
14 discretion to vary downward under § 4A1.3 if it concludes that the defendant's criminal history or
15 likelihood that he will commit other crime is overstated through the application of § 3A1.4. Although
16 the Ninth Circuit appears not to have ruled on this issue, the United States agrees that the Court retains
17 the discretion to depart downward if either of these factors is met.

18 Here, neither factor under § 4A1.3 is applicable. Prior to the instant offense, Kurashev
19 admittedly had no criminal history in the United States. However, the crime of which he now stands
20 convicted – attempting to materially support a foreign terrorist organization – is incredibly serious.
21 Kurashev was not lawfully in the United States and was subject to location monitoring by immigration
22 authorities when he committed the current offense. His employment afforded him the means to generate
23 and use approximately \$13,000 of disposable income to support HTS in its fight against the Syrian
24 government over a lengthy time period. As the Court already knows, Kurashev's conversations with
25 Fayzimatov evidence a deep emotional commitment to HTS's cause and a desire to give more than just
26 money, namely, to be personally involved in the fighting. But for his arrest in this case, Kurashev would
27 certainly have continued his financial support of HTS for much longer and may likely have gone to
28 Syria to fight. Kurashev's conduct was not a "one off" – it was a deep, abiding, and continuing

1 commitment and Kurashev showed no signs of ceasing his support of HTS. On this record, it cannot be
 2 said that Kurashev's criminal history category or likelihood of committing further crimes is overstated
 3 by the application of § 3A1.4.

4 The probation officer correctly concluded that there were no factors that supported a downward
 5 departure. The Court should overrule this objection.

6 **IV. UNITED STATES' SENTENCING RECOMMENDATION**

7 **A. 18 U.S.C. § 3553(a) Factors**

8 In deciding what sentence to impose on a defendant, after determining the advisory sentencing
 9 guidelines, the Court is required to consider the factors enumerated in 18 U.S.C. § 3553(a). Those
 10 factors include: (1) the nature and circumstances of the offense and the history and characteristics of the
 11 defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, promote
 12 respect for the law, provide just punishment and adequate deterrence, protect the public, and provide
 13 education or vocational training for the defendant; (3) the kinds of sentences available; (4) the kinds of
 14 sentences and sentencing range set forth in the guidelines; (5) the sentencing guidelines policy
 15 statements; (6) avoidance of unwarranted sentencing disparities among similarly situated defendants and
 16 (7) providing restitution to victims of the offense.

17 As discussed above and notwithstanding Kurashev's formal objections, the probation officer
 18 correctly applied the advisory sentencing guidelines set out at pages 8-9 of the PSR. Likewise, the
 19 probation officer correctly calculated Kurashev's criminal history. *See* PSR at 10. Kurashev's advisory
 20 guideline range after acceptance of responsibility is 360 months to life (37/VI). However, because the
 21 statutory maximum sentence is below the advisory guideline range, Kurashev's advisory guideline range
 22 is 240 months.

23 **B. A 240 month sentence is warranted**

24 Kurashev has earned and the Court should impose a 240 month sentence in this case.

25 **1. Nature and circumstances of the offense**

26 The nature and circumstances of the offense are serious. Kurashev stands convicted of a federal
 27 crime of terrorism for his attempted material support of HTS. As noted above, Kurashev's actions were
 28 not a "one off" but rather occurred over a lengthy period of time and were designed to support HTS's

1 continuing fight against the Syrian government.

2 Kurashev's conversations with Fayzimatov demonstrate that Kurashev was well aware that
3 Fayzimatov was not a legitimate journalist but rather a fundraiser, recruiter and propagandist for HTS.
4 Notwithstanding this knowledge, Kurashev still sent approximately \$13,000 to Fayzimatov through
5 trusted intermediaries in Turkey. According to Forbes.com, the current exchange rate is one U.S. dollar
6 to 2513 Syrian pounds¹³ which makes \$13,000 an extremely substantial level of financial support for
7 HTS.

8 Furthermore, evidence gathered by the FBI supports that Fayzimatov received the money sent by
9 Kurashev. For example, the Abu Salim video demonstrates that Kurashev's financial contributions
10 provided significant assistance for the purchase of the motorcycle for HTS fighters to use on the front
11 lines. Similarly, Fayzimatov's connecting the CYOP and Kurashev to facilitate the recruitment of
12 another money transfer source strongly suggests that Kurashev's money transfers were successful.
13 Fayzimatov even describes Kurashev to the CYOP as a "good and trustworthy brother." During later
14 contact with the CYOP, Kurashev shares the benefit of his money transferring experience. It is hard to
15 conceive of a situation where Fayzimatov's confidence in and praise of Kurashev is premised on
16 something other than the successful (and substantial) transfer of funds in support of HTS.

17 2. History and characteristics

18 Kurashev's actions undercut any suggestion that his history and characteristics warrant a lesser
19 sentence. Although Kurashev attempts to present himself as a family man who provides for his family
20 and is simply concerned about the war in Syria, as the Court knows from prior hearings, his intentions
21 were not benign. Kurashev conversations with Fayzimatov are couched in terms of Kurashev's financial
22 contributions being equal to personally engaging in violent jihad in Syria. Kurashev discusses his
23 longing for the "ribats" (or fortifications) and he was "trying to act only with [t]he intent [for jihad]."
24 See PSR at 7.

25 Kurashev will no doubt point to his experience with the Russian FSB in mitigation of his
26 actions, however, that experience provides a powerful incentive to provide material support to HTS.

27 ¹³ See https://www.forbes.com/advisor/money-transfer/currency-converter/usd-syp/?amount=1&from_currency=USD&to_currency=SYP (accessed on April 21, 2024)
28

1 Additionally, Kurashev's heavy consumption of violent extremist content, including an HTS recruiting
 2 video containing images of fighters and battles suggests a darker motive for his actions. Kurashev even
 3 went so far as to delete his messages to Fayzimatov and to obfuscate his internet usage to avoid
 4 detection. These are not the actions of someone who is concerned with journalistic freedom and shining
 5 a light on the Syrian conflict. Indeed, Kurashev has shown little remorse for his actions. His statement
 6 in the PSR about finding another way to help the Syrian people flies in the face of his actions and his
 7 conversations with Fayzimatov. *See* PSR at 8.

8 3. Seriousness of the offense, respect for the law and just punishment

9 As discussed throughout this memorandum, Kurashev's conduct was very serious. His actions
 10 and conversations with Fayzimatov indicate that he was more concerned whether financial support was
 11 tantamount to being personally present in Syria to engage in violent jihad. Kurashev knew he was
 12 breaking the law but simply did not care. A 240 month sentence is not greater than necessary to
 13 promote respect for the law and to secure a just punishment.

14 4. Unwarranted sentencing disparity

15 The United States expects that Kurashev may argue that a sentence of 240 months will result in
 16 sentencing disparity when compared to other material support cases in this district. *See United States v.*
 17 *Teausant*, EDCA No. 2:14-CR-00087 JAM and *United States v. Jameson*, EDCA No. 1-18-CR-00001
 18 LJO. The defendant in *Teausant* was sentenced to 12 years in federal prison after the Court concluded
 19 that the government's recommended 9 year sentence was insufficient. The defendant in *Jameson*
 20 received a 15 year sentence. Although the defendants in these cases were charged with attempted
 21 material support, the similarities end there. Both cases were the result of undercover operations and
 22 entered into negotiated specific sentence plea agreements under Fed.R.Crim.P. 11(c)(1)(C). *Teausant*
 23 attempted to travel to Syria and was arrested at the Canadian border. *Jameson* conspired with an
 24 undercover law enforcement agent to blow up Pier 39 in San Francisco and later attempted to withdraw
 25 from the conspiracy. Neither attempt materially supported a foreign terrorist organization to the same
 26 degree as Kurashev's financial support of HTS.

27 Here, there is no indication that Kurashev would have ceased his support of HTS had he not been
 28 arrested. He engaged in a relatively sophisticated scheme to send money overseas to HTS through

1 Fayzimatov's trusted intermediaries. The money Kurashev sent made it to Fayzimatov and was used in
2 HTS's fight against the Syrian government. Kurashev's actions had real impact, unlike Teausant and
3 Jameson. Kurashev held a deep and abiding belief in the righteousness of HTS's actions against the
4 Syrian government.

5 **V. CONCLUSION**

6 For all of the foregoing reasons, the Court should impose a sentence of 240 months followed by
7 an appropriate term of supervised release.

8
9 Dated: April 22, 2024

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